App. F. IX-4

1925.

File No. 11—25

Previous References (Court)

Serial Nos. 1—3

Presene

Later References
1928
1.3-69-15

General and Revenue Secretariat.

Serial Nos. Three

Part B for August 1928

SUBJECT

Trial of Mr. W. H. Young (whitefield) and his son (European British subjects)

Camp No P. 20 & 26-9-25 To the Dak Bungalow

States that the charge sheet against the persons may be placed before Mr. S. M. Pritchard Justice of the peace, K.G.I.

M Spencer
1/9/28

GENERAL AND REVENUE SECRETARIAT.

(A)

NOTES.

File No. 11-25

FILE HEADING.

Trial of Mr W. H King and his son (European British subjects)

From The District Magistrate, Bangalore

J/C No. 1107/ Dated 6.7.25 Received 8.7.25

Diary No.	Enclos.	Spare Copies.	Serial No.
89	2		1

BRIEF ABSTRACT OF LETTER.

Requesting for reasons stated, instructions as to which Court should try Mr King & his son

NOTES AND ORDERS.

Ld for orders The Br. Indian Amendment of the Cr. P. Code referred has not been perhaps adopted in Mysore and the procedure which is being hitherto followed not the expedited form - ie. the case

Serial No.

has not the placed the powers of the nearest Justice of Peace.

Vide Notification No 2770-7.8 dated 14-7-1904. (Flag A)

No 1863-1:A-8. (Flag B) 13-5-1904

Clause 9.7.25 Act XXV of 1879 referred to by the Distt. Magistrate has been repealed by the Extradition Act of 1903 but by the notifications issued in exercise of the powers conferred by the Indian (Foreign Jurisdiction) Order in Council 1902, the law relating to offences against Criminal procedure for the time being in force in Br. India, will apply, and the Justices of the Peace are invested with the powers that may be exercised by a 1st class magistrate under the Criminal Procedure Code. The Justice of the peace can exercise powers of a first Class magistrate & the law applicable is that prevailing in British India.

It is not correct to say that the new Code in Br. India has done away with the Justices of the Peace Vide Secs 22 to 25 of the Cr. Pro. Code as amended. The only change is that the Govt. General does not appoint Justices of the Peace & they need not be Europeans British subjects. Further the Justices of

NOTE—Contn. sheet.

of the Peace in the Br. Indian Code, have nothing to do with Indian States. Their scope of activity &c. Their jurisdiction is confined to Br India. Justices of the Peace appointed for Indian States like Mysore, were appointed by the Govt. Council, not under the Cr. Pro. Code, but under Act XXI of 1879 & after its repeal by the Order in Council of 1902, already referred to. They exercise jurisdiction in Mysore under that order & have powers of a first Class Magistrate. When last they had to apply & have to apply is that prevailing in Br. India.

European. The law in Br India, as regards Br. Subjects has now been changed. When a European British subject claims to be tried as such, a Sessions or Third Class magistrate of any nationality may try him, if the offence is punishable with fine not exceeding Rs 500/-. Otherwise the case will have to go before a first Class magistrate, (of any nationality) vide Sec 29A. If racial considerations arise (ie) where the complainant & the Co-accused happen to be Indians, the trial will proceed under Chap XXXIII, which prescribes a Bench of Magistrates, one of whom is a European & the other an Indian. In the case in question, there is a doubt as to whether the Justices of the Peace can entertain a complaint. He has powers of a first Class magistrate, but he is not a first Class Magistrate under the Cr. Pro. Code. Assuming that he can entertain the complaint, a further difficulty arises if provisions of Chap XXXIII have to be applied. He has to refer the case to a District magistrate, who will have to

Serial No.

Constitute the Bench Court so far as Native States are concerned. No District Magistrate of the kind, (a) appointed by the Govt. of Bhavnagar has jurisdiction under State Justice of the Peace Council cases direct to the High Court. No other Court has similar jurisdiction. The result is that in cases of this kind, the case cannot go one step out of machinery. This might be pointed out to the Regency & they may be asked to state what has to be done in cases of this kind. This may also be urged as a strong ground for the grant of jurisdiction to our Magistrates.

(b) In the case in question, the only course open seems to be to place a charge-sheet against Mr. King Thomson, before a Justice of the Peace, [illegible] (taking it for granted that Class I Magistrate under [illegible] and urging before [illegible] the case

5)

WD 2119—GPB—10.000—27-4-25

G.B.S. III-2]

General and Revenue Secretariat.

C.S. File No. of 19 25

Serial No.

7) The reference presents some difficulty. The law on the subject is stated in Emperor v. Iqbal reading (with my note) that only be tried for an offence committed in Lyons, by a Justice of the Peace appointed by the Governor-General, ~~or otherwise to the powers~~ having exercises the powers of a first class magistrate; that the ~~B~~ offender is, ~~bound to submit~~ to the law (both substantive & adjective) obtaining in B. India for the time being in force.

8) In Lyons there are Justices of the Peace appointed by the Gov. General exercises the powers of a first class magistrate under the Code of Criminal Procedure in force in B. India.

9) By Sec 3 of the new Code (1923), the expression 'offence' ~~(or exercising (or having)~~ the powers (or the full powers) of a magistrate used in former enactments, shall mean 'magistrate of the first class'. Hence a J.P. Lyons who is appointed as such and is entrusted with all the powers conferred by the Code of Criminal Procedure (1898) on magistrates of the first class (Schedule A), may be considered a magistrate of the first class within the meaning of the expression in Sec 6 1923.

10) The different

89

(Serial No

12) If the enquiry ends in a discharge, no difficulty arises. for Sec 143 will not come into operation until the accused is asked to show cause under Sec 242 or enters on his defence under Sec 256. Under Sec 445, the magistrate trying a summons case is bound to refer the case to a bench of magistrates for trial, one must be an Indian and the other an Indian.

1917

13) There is no Indian magistrate appointed under the Indian Code - nothing in the Code to appoint unless they are appointed, the trial cannot take place.

14) Under a reference to the Presidency to take immediate steps for the appointment of 2nd magistrate, Sessions Judge, the question of the 2nd & 3rd Class magistrates under the new Code is necessary. In the case change sheet may be placed before the next [illegible] proceeding with witnesses with the Presidency magistrate to try the magistrate.

499/207 1st May 1917

15) The [illegible] and [illegible] in the case sheet [illegible] placed before [illegible] (Sessions) [illegible] the Sessions Judge is not [illegible] after the [illegible] the [illegible] the Presidency Magistrate or other [illegible] suggestions before [illegible] party [illegible] Sessions Judge

for

NOTE—Contn. Sheet

Serial No

23) [illegible] 24 (1926). May 24 is a procedure [illegible] Cases in which a Judge of the Chief's Court [illegible] 31/7/25 AM 31/7 the Chief Judge has taken cognizance as Justices of the Peace are [illegible]

25 As any appeal a proceeding does with lie to the Chief Court, [illegible] does not appear that any objection to the course suggested. The High Court of Madras is the Court to which an appeal lies & to which the accused are to be committed, & Judges act in their capacity of Justices of the Peace, and not as Judges of the Chief Court.

26 There is however, one point to be considered. Mr Plumer is a Chief Judge and when his position will come in the case of his taking up a case, which may be taken in appeal to the High Court, where his decision may be [illegible] while trying [illegible]; however

20

pointing out the difficulties of the situation and the defect that has arisen after the amendment of the Cr. Pro. Code in Br. India.

The other J.P.s are Messrs Bowring and Pritchard, both Officers of the Police Dept, who may not take up a case launched by their own Police and Mr Bogue the only remaining J.P. and he does not appear to be in favour (for particulars about this)

Sd/-

L.A.L. Secy

Copy

31.7

The Planter will try the case as a Justice of the Peace appointed by the Governor-General and not as a Chief Judge appointed by the H. C. by virtue of his holding of that office.

32) Formerly the Chief Court had original jurisdiction when a single Judge with the Chief Judge was exercising the powers of a Supreme Court over cases arising within Bangalore District. In such cases an appeal against the decision of a single Judge used to be heard by other Judges. Even in High Courts this practice continues.

33) Hence the Planter may not feel it difficult to

32) Yes, that is correct

Yes, I do

DEWAN'S OFFICE
[illegible] 7 AUG 1925
Reg. No. 1140

General and Revenue Secretariat.

File No. 1711 of 19 25

Serial No.

DEPUTY'S OFFICE.
REC'D 15. AUG. 1925
Regd. No. 4454

33) As instructed by the Secy I submit to the Distt Magistrate to place this charge sheet before Mr Gordon Plumer is returned

Dy Secy (34) this is an urgent matter draft is submitted for orders

4454/14.8

Dewan.

35) Yes

15.8 Dy Secy 15.8

36) Orders of the Dist to Dy. Collr Khandesh are there on file for ref.

17/8 Dy Secy

37) Submitted for orders

17/8 Dy Secy

Initials of the Dewan, under secy, Dy Secy issued

17.8 Dy Secy

38) Submitted for orders

10/8

39) Submitted for orders

17/8 Dy Secy 17/8

40) Yes

41) Dy Secy 19.8

42) Dy Secy 20/8 Dy Secy 20/8

NOTE—Contn. Sheet

~~Petn~~ File No. 11 of 1925

General and Revenue Secretariat.

Serial No. 2

To: The ~~Dep~~ Bangalore
dated Sept. 1: 32 dy 20 Aug. 25 - ~~Sub~~ Re
~~Petn~~ Petition Murder Case ~~Dep~~
(1) Copies in duplicate
(2) Petition dismissed before me
A. R. D. Plumer, Chief Judge as he is
the nearest Judicial officer
who is not a police officer.

Serial No.

43) Put with reference to paragraph (42) above. Said reference is invited to paragraph (15) on page 6 and directions are solicited for the preparation of a draft to the Residency. The S.J.P., it is submitted, depends in the draft to the Residency. Put with a rough S.J.P. and a draft to the Residency for orders.

24/8/25

44

3 From

The Regr. Chief Court.

D.O. letter no 315 § 4.9.25.

Requests for reasons stated that it would be desirable that justice of the peace cases are not sent for trial by the present chief judge and that such cases may be sent for trial either to the D.M. Coimbatore or Mr. R Bosquet at K.G.F. who is a J.P. and who is not a police officer.

4/9 § First members note on P.R.D.

To be submitted at once with the file relating to the case.

2nd K.R.S

4/9/25.

45)

Put with the file - As suggested by the Chief Court, the Charge Sheet may be placed before the Distt Magte Judge of C.M.S. Stations. There have been instances (Capt Bowens Case sometime last year & a case from Kadur).

3/ 4/9/25. for 45

NOTE—Contn. Sheet

Serial No.

of Charge Sheets being placed before the ~~First~~ First Magistrate in CTH Station. A reason may be assigned that as the Cr. Pro. Code in Br. India is amended the only Court that can properly try, is Chap XXXIII has to apply is the Court in CTH Station. Or the alternative suggested by the Chief Court, of placing the Charge sheet before the Bogpet in K.S.T. may be permitted & followed

H.H. Secy
1st Mar

Cor
4/9
8/9
5/9
Cor
5/9

Serial No.

I am not in favour of placing the charge sheet before the Dt. Magte. & the Court Station, as such a course will have to be adopted every where there is no J.P. in the Mysore State (outside Court station)

I believe Mr Bourgeois is now on leave from the 8th & not likely to be relieved for some time. I think that Mr Richards (Dist 8th) is a J.P. This may be verified & if he is, the charge sheet may be ~~sent~~ returned to the place before him & the case reported for the orders of Govt.

A

Dy Supdt of Police
The Govt as already
instructed may be pleased
to take immediate steps

24.9.

Asst Supdt of Police

24.9.

Draft Govt
I.G.P.
26.5.25

Issue
24.9.

To the Dy Commr Bangalore No 520 dated 26.9.25

In modification of G.O. No. Mis. dated
the charge sheet may be placed before
Mr Richards.

Note—Contn. Sheet

General and Revenue Secretariat

File No. 11 1097 of 25 ../of 1925

Serial No

Resubmitted as directed
Ldv.
27.9.25

This file which was marked to the Pol. Dept of European British Subjects is returned to the Political Dept with Complete Case Record.

28/8/25. The papers will be recorded further action address the pending has been taken in the P.D Secn.

28/8

1925

01023 Urgent

89 P 25

In all future correspondence please quote No.....
.....

No. Y.C. 1107 — En. 2 —

OFFICE OF THE DEPUTY COMMISSIONER,
and District Magistrate,
BANGALORE DISTRICT.

Dated Bangalore, the 6th July *1925*

GENL. BRANCH. RECEIPT. Dy. 7 JUL 1925 To C.D. SECTION.

FROM

B. VENKOBA RAO, ESQ., B.A.,
Deputy Commissioner, and District Magistrate,
Bangalore District.

JS 11-25-1

To

B. Nagappa, Esq., Bar-at-Law,
Secretary to the Government of His Highness
the Maharaja of Mysore, Local and Legislative Depts.,
Bangalore.

SIR, JS 817

I have the honour to state that on 11-5-1925 the District Superintendent of Police placed a charge sheet before the Special Second Grade Magistrate, Bangalore, for an offence under Section 143 of the I.P.C. against Mr. W. H. King, his son and six others. Mr. King and his son claimed to be tried as European British subjects under Chapter XXXIII of the British Indian Criminal Procedure Code. Mr. King produced a birth certificate showing that he is a European British subject by birth. The Special Second Grade Magistrate thereupon forwarded the records, (C.C.No.266 of 24-25) to me requesting me to refer the case to the competent Court. The District Superintendent of Police, Bangalore District, was asked to report as to why a charge sheet was not placed before the nearest Justice of the Peace as per Government Order No.J. 2846/Cts.116-12-1 dated 26th March 1913. A copy of the reports received from the District Superintendent of Police is herein enclosed for information. As reported therein under Section 8 of the British Indian Act XXI of 1879, the Criminal Procedure Code as in force in British India will apply to all European British subjects committing offences in Native States. Under the old Criminal Prodedure Code of British India, they were triable by Justices of the Peace. But the code as now amended in British India has done away with the office of a Justice of the Peace.

European British subjects are now given the option under Section 445 of the amended Criminal Procedure Code to ask for a trial by a Bench consisting of two 1st Class Magistrates, one an Indian and another a

Letter No.Mis.C.833/24-25 dated 27th June 1925 from the District Superintendent of Police, Bangalore Dist., to the District Magistrate, Bangalore District.

Reference:- District Magistrate's No.J.C.1107/Enc.A.& B.Files dated 11-6-1925.

Submitted to the District Magistrate.

The charge-sheet in this case was not placed before the Justice of the Peace as the amended Criminal Procedure Code of British India which is the Code applicable to the European British subjects as per Section 8 of the British Indian Act XXI of 1879 has done away with all provisions under which a person who may try a European British Subject must be a Justice of the Peace. As the offence under Section 143 I.P.C. relates to a summons case, the procedure laid down in Section 445 of the amended Criminal Procedure Code has to be followed by the Magistrate.

As the joint trial of a European British subjedt and a native subject of H.H.The Maharaja of Mysore has been held to be illegal (12 Mys.C.C.R.56) the Magistrate may kindly be directed to proceed with the case according to the provisions of the Mysore Procedure Code against the 6 accused persons who are not European British subjects and to adopt the procedure laid down in Section 445 Criminal Procedure Code of British India as regards the case against the two European British subjects.

With a view to facilitate the splitting up of the file into two cases and have one charge sheet for each case, i.e. one against the two European British subjects and the other against the 6 non-European British subjects I have attached hereto a copy of the original charge-sheet.

Sd. T.V.A.Isveran.
Dist.Supt.of Police, Bangalore Dt.

Copy

Dist.Magistrate, Bangalore Dt.

Q.

App.F.VI G1.] B650

SUBJECT .....

.....

.....

Diary No. of letter replied to .....

General and Revenue Secretariat
( )
, the 192

Date of issue 20/8/25

Signed by .....

List of enclosures .....

Copied by .....

Examined by .....

Section Cant5
File No. 11—25
Serial No. 2
No. 1132(1)

To Mr D. M. Baneyeare

Sir

With reference to your letter no. Je-(1-0-7)-7 6-7-25 re the trial of Mr. W. H. Knipand his son, I am directed to request you to instruct the D.S.P to have the charge sheet against Mr. Knip. and his son placed before Mr Plumy (Chief Justice) as he is the nearest Justice of the Peace who is not a police officer.

The charge sheet received with your letter is herewith returned.

I have etc.

25/8/25

for Secretary

over

22/7/25

Roc: 315/25-26

CS 11:25:3

1927 S.P. 328

CONFIDENTIAL & IMMEDIATE.

CHIEF COURT
OF MYSORE.
BANGALORE.
Dated 4th September 192

Rec'd 1.28 PM

Dear Sir,

I am desired to invite reference to your letter No.P. 1132 (1) Cts. 11-25-2 dated the 20th August 1925 to the Deputy Commissioner and District Magistrate, Bangalore, re: trial of Mr. W. H. King and his son, issuing instructions to have the charge sheet against Mr. King and his son placed before Mr. R. B. Plumer, Chief Judge.

2. I am to state that the decisions of Justices of the Peace in the Mysore State can be taken in appeal to the Madras High Court where it is often disposed of by a single Judge, and that as Mr. R. B. Plumer now happens to be the Chief Judge, it is not consistent with the dignity of the Chief Court that an appeal from the decision of the Chief Judge -- though in a different capacity as a Justice of the Peace -- should be heard by a single Judge of a foreign Court. In these circumstances, it would be desirable that Justice of the Peace cases -- unless absolutely unavoidable -- are not sent for trial by the present Chief Judge.

3. I am to observe that the District Magistrate, C. & M. Station has jurisdiction as Justice of the Peace over the whole State and such Justice of the Peace cases, including the present one, may be sent for trial either to him or to Mr. R. Bocquet at Kolar Gold Fields, who is a Justice of the Peace, not a police officer.

4. I am to request the favour of a very early reply, as the case has been held in abeyance pending a reply from Government.

Yours Sincerely,
Meenakshipuram
4/9/25

B. Nagappa, Esq., Bar-at-law,
Secretary to Government,
Local & Legislative Departments,
BANGALORE.

App.F.VI-G1.]

B650

SUBJECT

Diary No. of letter replied to

General and Revenue Secretariat

( )

, the 192

Date of issue 26. 9. 25

Signed by Mr C Lehmann

List of enclosures

Copied by

Examined by

Section C to

File No. 11- 25

Serial No.

Camp No. P. 20

To The D.M. Bangalore

Sir,

In modification of this office letter No. S. 1134-6 G 11. 25-2 dated 20.8.25, I am directed to state that the charge sheet against M. King and his son may be placed before Mr. F. M. Pritchard, Justice of the Peace (1327) and that the fact may be reported for the information of Govt.

I have etc

Mr. L Hoveler